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No._____

In The

Supreme Court of the United States

OCTOBER TERM, 1983

LIBERTARIAN PARTY OF LOUISIANA,

Petitioner,

VS.

JAMES H. BROWN, SECRETARY OF STATE FOR THE STATE OF LOUISIANA, AND EDWIN A. LOMBARD, CLERK OF THE CRIMINAL DISTRICT COURT FOR THE PARISH OF ORLEANS, STATE OF LOUISIANA,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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QUESTIONS PRESENTED

1. WHAT IS THE PROPER STANDARD OF REVIEW TO USE IN EVALUATING THE CONSTITUTIONALITY OF A STATE BALLOT ACCESS LAW WHICH DISCRIMINATES AGAINST MINOR POLITICAL PARTIES BY PROHIBITING BALLOT DESIGNATION OF PARTY AFFILIATION FOR THEIR CANDIDATES?

2. DOES THE LOUISIANA ELECTION CODE UNCONSTITUTIONALLY DENY BALLOT ACCESS TO MINOR PARTIES BY EXCLUDING SUCH PARTIES FROM BALLOT DESIGNATION IN ALL STATE AND LOCAL ELECTIONS UNLESS A PARTY CONSTITUTES FIVE (5%) PERCENT OF STATEWIDE VOTER REGISTRATION OR HAS RECEIVED AT LEAST FIVE (5%) PERCENT OF THE VOTES CAST STATEWIDE IN THE LAST PRESIDENTIAL ELECTION?

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OPINIONS BELOW

The opinion of the United States Court of Appeals for the Fifth Circuit is reported at 717 F.2d 1491 (5th Cir. 1983) and is set forth in the Appendix to this petition at Page 1. The memorandum opinion of the United States District Court for the Eastern District of Louisiana is reported at 531 F.Supp. 135 (E.D. La. 1982) and is set forth in the Appendix to this petition at Page 76.

JURISDICTION

The judgment of the Court of Appeals was entered on October 24, 1983. A timely Petition for Rehearing was denied on December 12, 1983. The jurisdiction of this Court is invoked under 28 U.S.C. §1254 (1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The statutes challenged by petitioner are cited La. R.S. 18:441 and La. R.S. 18:551(D)

and (E), and are set forth in the Appendix at Pages 147-153. Also involved by comparison is La. R.S. 18:1259(B), which is set forth in the Appendix at Pages 147-157.

Petitioner's challenge is based on the First and Fourteenth Amendments to the United States Constitution and on Article I, Section 3 of the Louisiana Constitution of 1974. These constitutional provisions provide in pertinent part:

First Amendment

> Congress shall make no law... abridging the freedom of speech... or the right of the people peaceably to assemble and to petition the Government for a redress of grievances.

Fourteenth Amendment

> Section 1. ... No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

* * * * *

Article I, Section 3,
Louisiana Constitution of 1974

§ 3. Right to Individual Dignity

Section 3. No person shall be denied the equal protection of the laws. No law shall discriminate against a person because of race or religious ideas, beliefs, or affiliations. No law shall arbitrarily, capriciously, or unreasonably discriminate against a person because of birth, age, sex, culture, physical condition, or political ideas or affiliations. ...

STATEMENT OF THE CASE

1. This Action

Henry T. Dart and the Libertarian Party of Louisiana filed this suit against the Secretary of State of the State of Louisiana, James H. Brown, and the Clerk of the Criminal District Court of the Parish of Orleans, Edwin A. Lombard, in the United States District Court for the Eastern District of Louisiana on January 11, 1982.

In the first count of their complaint plaintiffs asserted a claim under the First

and Fourteenth Amendments of the United States Constitution and 42 U.S.C. §1983 alleging that §§441 and 551 of the Louisiana Election Code (Title 18 of the Louisiana Revised Statutes) were unconstitutional in that they denied to the Libertarian Party of Louisiana, its candidates, and its supporters equal protection of the laws by requiring that candidates duly nominated and qualified as candidates of the Libertarian Party in local elections be listed on the official ballots without their bona fide party affiliation -- "Libertarian" -- but rather with an indication of no party affiliation, in contrast to candidates of the Democratic and Republican parties, whose party designations are printed on the ballots.

Dart, who had recently qualified to run for the office of New Orleans City Councilman, and the Libertarian Party sought injunctive and declaratory relief ordering the state officials charged with preparing the election ballots to place the words "Libertarian Party"

after Dart's name on the ballot or, alternatively, to place no party affiliations after the names of any candidates on the ballot.

In a second count the plaintiffs alleged that Louisiana's refusal to accurately identify Dart's party affiliation on the ballot was a violation of Article I, §3 of the Louisiana Constitution of 1974 as an arbitrary, capricious, and unreasonable discrimination based on political ideas or affiliations. The second count sought the same relief as the first.

Count One of the complaint founded the jurisdiction of the court on 28 U.S.C. §1343, and Count Two asserted the pendent jurisdiction of the United States District Court to resolve the claim arising under the Louisiana Constitution. Federal jurisdiction for this matter is also conferred by 28 U.S.C. §1331.

On January 22, 1982 the plaintiffs filed an amended complaint adding a third count and the additional defendants Jerry Fowler in his

capacity as Commissioner of Elections of the Louisiana Department of Elections and Registration and in his capacity as a member of the Louisiana State Board of Election Supervisors; William J. Guste, Jr., Attorney General of Louisiana, in his capacity as a member of the State Board of Election Supervisors; and James H. Brown in his capacity as a member of the same Board. The new count realleged the contentions of the original complaint and added a claim that various of the defendants were engaged in activities which denied the Libertarian Party of Louisiana a fair opportunity to become qualified as a "recognized party" under the Louisiana Election Code, in violation of plaintiffs' constitutional rights.

2. The Louisiana Statutes

The Louisiana Election Code provides an "open primary" system for all state and local elections. All candidates participate in a

common primary election in which all voters are eligible to vote, regardless of party affiliation. The "general election" is merely a runoff election held when no candidate wins a majority in the primary.

La. R.S. 18:441 (Appendix, Page 147) provides that a political party shall be considered a "recognized" political party in Louisiana "if one of its candidates for presidential elector received at least five percent of the votes cast [statewide] for presidential electors in the last presidential election, or if at least five percent of the registered voters in the state are registered as being affiliated with the political party." (emphasis supplied)

The main result of being classified as a recognized party under Louisiana law, other than the prescription and provision of an elected party management structure, is that candidates of recognized parties are listed on all ballots as being affiliated with their

designated political parties, while candidates of non-recognized parties are characterized on all election ballots and in most State records as having no party affiliation.

La. R.S. 18:551 (Appendix, Pages 147-153) provides for the preparation of election ballots. Paragraphs (D) and (E) of §551 provide in pertinent part:

> D. Political party designation. The political party designation of a candidate who is registered as being affiliated with a recognized political party shall be printed on the primary or general election ballot on the same line and immediately after or below the candidate's name. If a candidate is not affiliated with a political party, the space after his name shall be left blank.
>
> E. Uniformity. Except as specifically authorized in this Section, no information, designation, or title shall be printed on the ballot. ...

In contrast to the party designation rule for state and local elections, the Louisiana Election Code permits designation of party affiliation for all candidates in the presidential election. La. R.S. 18:1259(B), (Appendix, Pages 154-156). Section 1259(B)

produces this result by allowing presidential and vice presidential candidates nominated by non-recognized parties to have "the political principal (sic)" they support printed next to their names on the ballot.

3. The Trial

On January 29, 1982 plaintiffs' suit was tried to The Honorable Robert F. Collins, Judge of the United States District Court for the Eastern District of Louisiana.

The evidence at trial showed that there is a national Libertarian Party in the United States, and that the Party is organized in all fifty states. In 1980 the Party nominated Ed Clark for president and his name was on the ballot in every state. Clark received 8,240 votes of 1,548,591 votes cast for president in Louisiana, or approximately .53 percent of the total.

It was shown that the Libertarian Party of Lousiana is duly organized with a constitu-

tion, by-laws, and a State Central Committee, and that the Party has an annual convention. The evidence showed that Henry T. Dart was nominated by the Libertarian State Central Committee to run for the New Orleans City Council, and that he qualified for his candidacy, as did the other candidates for the office, by paying a qualifying fee and filing a Notice of Candidacy with Defendant Lombard.

The Notice of Candidacy required Dart to check one of three party designations: "member of the Democratic Party", "member of the Republican Party", or "not affiliated with a recognized political party". Dart checked the last box and typed in "Libertarian Party" next to it.

Four other candidates qualified for the councilman race in Dart's district. All were Democrats. The certification of qualified candidates sent by Defendant Lombard to the Secretary of State, whose responsibility it

was to make up the ballots, gave the party designation of Dart's four opponents as "Democrat". It gave Dart's as "No Party". The ballot prepared by the Secretary of State listed the Democratic affiliation of each of Dart's opponents, but it showed no party affiliation for Dart.

There was further evidence adduced at trial that some members of the Libertarian Party had had difficulty getting local voting registrars to record their party affiliations as "Libertarian" or had been told that it was not possible to register as "Libertarian".

A member of the Libertarian State Central Committee, Wade Brisbin, testified that the Libertarian Party wanted its name to be placed on the ballot because party labels help to identify and communicate to the public the philosophy and principles a candidate stands for. He testified that the Libertarians wanted the same opportunity enjoyed by Republicans and Democrats to identify their

candidates with the Party's principles. Brisbin said the Libertarian Party had been seeking recognized status in Louisiana but had been unable to attain either the presidential vote qualification or the voter registration qualification of R.S. 18:441.

The Director of Voter Registration for the State of Louisiana, Louis Bruder, testified that as of September 30, 1981 the total number of registered voters in Louisiana was 1,942,241. Five percent of this figure would be 97,147, the number of voter registrations the Libertarian Party would have to gain in Louisiana under R.S. 18:441 in order to become recognized through voter registration. Bruder further testified that although his office formerly recorded voter registration figures for minority parties as reported by the parish registrars, it no longer tabulated such figures, and currently reported voter registration only by the categories "Democrats", "Republicans", and "Other Registrants". As of

September 30, 1981 Bruder's records showed 117,920 "Other Registrants" or about 6.07 percent of the total; but he could not say how many of those were Libertarians without polling all of the individual parish registrars. According to Bruder, no party other than the Democratic and the Republican parties had qualified as a recognized party in Louisiana for many years.

The District Court ruled in favor of the defendants, holding that since Dart was personally on the ballot, there was no significant infringement of plaintiffs' constitutional rights. Though concluding there was "some denial of equal protection in the whole procedure" (Oral reasons for judgment, January 29, 1982), the Court ruled that the Louisiana party designation provisions constitute a reasonable means of reducing electoral confusion and cause no undue burden on minor political parties. The Memorandum Opinion of the District Court is reproduced in the Appendix at Pages 76-92.

4. The Appeal

The Libertarian Party of Louisiana appealed the decision of the District Court to the United States Court of Appeals for the Fifth Circuit. The opinion of the Court of Appeals, which contains further factual detail on the case, is given in the Appendix at Pages 1-75. Noting that its holding may be inconsistent with that of the Court of Appeals for the Eighth Circuit in McLain v. Meier, 637 F.2d 1159 (8th Cir. 1980), the Fifth Circuit held that the proper standard of review did not require "strict scrutiny" of the Louisiana statutory system. The Court's basic premises for this conclusion were apparently its opinions: (1) that the ballot access jurisprudence of the United States Supreme Court, from Williams v. Rhodes, 393 U.S. 23, 89 S.Ct. 5, 21 L.Ed.2d 24 (1968), to Anderson v. Celebrezze, --- U.S. ---, 103 S.Ct. 1564, 75 L.Ed.2d 547 (1983), provides no more support

for the associational, communicational, and voting rights of minor political parties than that represented by the ability of their candidates to be listed on a ballot without party designation; and (2) that since Dart personally was granted access to the ballot, so was the Libertarian Party.

The Party timely petitioned the Court of Appeals for a rehearing, but the petition was denied.

In view of the many conflicts expressed by the opinion of the Court of Appeals for the Fifth Circuit with the jurisprudence of the Supreme Court and of other Courts of Appeals, and in view of the great importance of clear judicial resolution of issues at the heart of our democratic system and electoral process, the Libertarian Party of Louisiana respectfully submits this petition and the following argument to the Supreme Court.

REASONS FOR GRANTING THE PETITION

1. The Supreme Court Should Grant Certiorari to Clarify an Important Area of Constitutional Law.

The jurisprudence of the Federal Courts on the subject of voting rights and ballot access, reckoning only from 1968, has been very extensive.

It is often observed that:

> Restrictions on access to the ballot burden two distinct and fundamental rights, "the right of individuals to associate for the advancement of political beliefs, and the right of qualified voters, regardless of their political persuasion, to cast their votes effectively." Williams v. Rhodes, supra, 393 U.S. at 30, 89 S.Ct. at 10. The freedom to associate as a political party, a right we have recognized as fundamental, see 393 U.S., at 30-31, 89 St.Ct. at 10, has diminished practical value if the party can be kept off the ballot. Access restrictions also implicate the right to vote because absent recourse to referendums, "voters can assert their preferences only through candidates or parties or both." Lubin v. Panish, 415 U.S. 709, 716, 94 S.Ct. 1315, 1320, 39 L.Ed.2d 702 (1974).

Illinois State Board of Elections v. Socialist Workers Party, 440 U.S. 173, 184, 99 S.Ct. 983,990, 59 L.Ed.2d 230 (1979).

The seriousness of the values involved in the regulation of elections has required the development of somewhat ambiguous standards for testing the balances of rights involved. The grounding of ballot access rights in both the First Amendment associational and democratic values, on the one hand, and also on the Equal Protection Clause, on the other, illustrates the way in which differing rationalizations arise to measure the constitutionality of legislative enactments alleged to have overburdened the rights of minority political parties and independent candidates. See the concurring opinions of Justice Blackmun and Justice Stevens in Illinois State Board of Elections v. Socialist Workers Party, supra, concerning the standard of review in such cases, and see also footnote 7 in Anderson v. Celebrezze, --- U.S. ---, 103 S.Ct. 1564, 75 L.Ed.2d 547 (1983), Page 6 of the Slip Opinion.

Anderson v. Celebrezze, supra, offered a weighing process to evaluate challenges to State election laws. One must evaluate the character and magnitude of the asserted injury, identify and evaluate the precise interests put forward by the State to justify the challenged procedures, weigh these considerations against alternatives, and arrive at a conclusion of whether or not "the challenged restriction unfairly or unnecessarily burdens the availability of political opportunity." Anderson v. Celebrezze, supra, at Pages 8-13 of the Slip Opinion.

The issues that are presented by Dart v. Brown, (Appendix, Page 1), are at the very least subject to differing resolutions based on one's image of "reasonableness" as to the competing interests involved.

At the core of Dart v. Brown is the issue of the kind of distinction to be made between the rights of candidate access and those of party access. Candidate access implies the

ability of candidates, whether partisan or independent, to get on ballots, whether by means of nominating petitions or party nomination procedures. Party access refers to the collection of issues determining the rights of political parties to be allowed to communicate and compete in the political process. Intrinsic to the notion of party ballot access is the presentation of candidates to the voters with their party affiliations identified.

The Fifth Circuit appears not to have come effectively to grips with this distinction in Dart. Note the expressions of doubt and uncertainty made by the Court of Appeals concerning the following aspects of the case: (1) the impact on a candidate or minor party of denying a party label on the ballot (Slip Opinion, Page 363; Appendix, Pages 51-54); (2) the burden caused to small or local parties by Louisiana's requirement that in order to be able to have party designation on the ballot such a party must obtain five per-

cent of the statewide voter registration, approximately 97,174 registered voters; and (3) the issue of excessiveness of Louisiana's party recognition restrictions (Slip Opinion, Page 369; Appendix, Pages 73-75).

Petitioner submits that the jurisprudential conflicts surrounding these matters, as evidenced by the lengthy Dart opinion, and by the matters to be raised in this petition, warrant the granting of certiorari herein in order to clarify the legal principles in contest.

2. The Holding of the Court of Appeals on the Question of the Standard of Review to Use is in Conflict with the Decisions of the Supreme Court and Other Federal Courts.

The Court of Appeals ruled that a "strict scrutiny" standard for reviewing the questions raised in Dart is inappropriate. The Court's basic rationale seems to be that the barrier erected by Louisiana's party recognition statute (La. R.S. 18:441; Appendix, Page 147) to new party ballot access is too "minor, indirect, and remote," or too "indirect

attenuated, and slight" (Slip Opinion, Pages 363-4; Appendix, Pages 49-54), to justify requiring the State to show a compelling reason for it. But this approach is inconsistent with the more demanding standards announced by Williams v. Rhodes, 393 U.S. 23, 89 S.Ct. 5, 21 L.Ed.2d 24 (1968); Bullock v. Carter, 405 U.S. 134, 92 S.Ct. 849, 31 L.Ed.2d 92 (1972); Lubin v. Panish, 415 U.S. 709, 94 S.Ct. 1315, 39 L.Ed.2d 702 (1974); Storer v. Brown, 415 U.S. 724, 94 S.Ct. 1274, 39 L.Ed.2d 714 (1974); Illinois State Board of Elections v. Socialist Workers Party, supra; and Anderson v. Celebrezze, supra.

Dart v. Brown is in direct conflict with McLain v. Meier, 637 F.2d 1159 (8th Cir. 1980), as to the standard of review to be applied in party access cases. The plaintiff in McLain complained of party access rules that burdened his right to obtain a separate partisan presentation on the North Dakota ballot. Applying a strict scrutiny standard

the McLain Court invalidated the challenged ballot access provisions even though the State provided a very easy means of candidate access (300 signatures) and even though, as an independent candidate, McLain was allowed to have his party label on the ballot.

The burdens on the plaintiff in McLain -- merely not being granted a separate party column (which, easier partisan access provisions would have given him) -- were far lighter than those imposed on Henry Dart and the Libertarian Party in Louisiana. Nevertheless, the Eighth Circuit properly employed a "strict scrutiny" analysis with them because of their impact on the fundamental rights of ballot access. The ballot format issues also addressed by the McLain Court indicate the kinds of issues suitable for resolution under a "rational basis" test.

The rights of minority parties and their roles in the functioning of the American democracy are of such fundamental importance

under our Constitution that the balancing process mandated by Anderson and its predecessors requires that burdens on such rights be weighed very carefully and not with the relatively indifferent attitude expressed by the Fifth Circuit in Dart.

Several recent Federal court cases illustrate what, petitioner submits, is the proper standard of review to be employed with party ballot access restrictions of the kind dealt with herein.

In Baer v. Meyer, 728 F.2d. 471 (10th Cir. 1984), the Court of Appeals for the 10th Circuit dealt with a challenge brought by representatives of the Libertarian Party and the Citizens Party against a Colorado statute which barred local voting registrars from recording the party affiliation of voters affiliated with minor parties. Besides showing the constitutional value of addressing the organizational needs of minor parties, Baer correctly utilized the Anderson test of

weighing the unfair or unnecessary impacts on political opportunity caused by the restrictive measures.

In Blomquist v. Thomson, --- F.Supp. --- (D. Wyo. Feb. 17, 1984), Appendix, Pages 94-128; Libertarian Party of South Dakota v. Kundert, 579 F.Supp. 735 (D. S.D., 1984); and Reagan v. Kansas, (unreported), No. 82-4083 (D. Kan. June 16, 1982), Appendix, Pages 129-146; three different District Courts subjected party ballot access restrictions to strict scrutiny, holding them unconstitutional in view of the absence of compelling State justifications for unduly burdensome provisions.

3. The Court of Appeals Erred in Evaluating the Constitutionality Of the Challenged Statutes.

Petitioner strongly urges that the Court of Appeals erred in applying whatever standard of review it chose to use. In its evaluation of the constitutionally significant issues in Dart it erred in not appreciating the charac-

ter of the rights asserted by the plaintiffs and in giving excessive dignity to considerations of countervailing State interests as to which less burdensome and more reasonable alternative regulatory devices are available.

Petitioner submits that this Court has always been sensitive to the separate significance of party access and candidate access to the electoral process. As the Court observed in Storer v. Brown, supra,

> ...the political party and the independent candidate approaches to political activity are entirely different and neither is a satisfactory substitute for the other.

415 U.S. at 745, 94 S.Ct. at 1286.

To withstand scrutiny under the First and Fourteenth Amendments, ballot access restrictions must prejudice neither the rights of those who seek to preserve their independence from parties nor the rights of those who choose to associate with others in political parties. It is unconstitutional either to require a bona fide independent candidate to

assume a partisan affiliation in order to participate in elections, or to require a bona fide partisan candidate (with reasonable indicia of seriousness or popular interest) to masquerade as an independent. Illinois State Board of Elections v. Socialist Workers Party, supra; McCarthy v. Briscoe, 429 U.S. 1317, 97 S.Ct. 10, 50 L.Ed.2d 49 (1976); Lubin v. Panish, supra; Storer v. Brown, supra; Bullock v. Carter, supra.

The importance of party access vis a vis candidate access can be seen in cases which disapproved unduly burdensome party access rquirements despite the availability of liberal independent candidate ballot access provisions.

In Reagan v. Kansas, supra, (Appendix, Page 129) the Court was faced with a party access provision that was very discriminatory toward recently formed parties. The existence of a petition alternative which provided fairly easy ballot access for independent candidates

did not save the discriminatory party access provisions from condemnation.

In Libertarian Party of South Dakota v. Kundert, supra, a party access provision that bound the signers of an access petition to join the new party was held unconstitutionally burdensome on the organizational rights of new parties. The existence of a lenient independent candidate access provision based on a voters' petition did not make the party discrimination more acceptable.

North Carolina Socialist Workers Party v. North Carolina State Board of Elections, 538 F.Supp. 864 (E.D.N.C. 1982), was a similar case, in which a "disaffiliation" obligation, requiring signers of a party access petition to change their voter registration, was struck down despite the existence of a petition alternative for independent candidate access that didn't have the disaffiliation feature.

Blomquist v. Thomson, supra, (Appendix, Page 94), presented a statutory scheme that

effectively barred new parties from immediate ballot access regardless of their apparent popularity. Citing McLain v. Meir, supra, the Blomquist Court stated:

> A minor political party's rights are not adequately protected where the state '...is willing to encourage minority political voices, but only if they are partially stripped of a legitimizing party label.'

Blomquist v. Thomson, supra, (Appendix, Pages 125-126).

Baer v. Meyer, supra, and McLain v. Meier, supra, reflect the same concern for safeguarding reasonable ballot access for political parties no less than for independent candidates.

In all of the mentioned cases the judges were concerned with making a realistic assessment of the threat posed to minor political parties by the ballot restrictions, comparing any such threats with the competing interests of the State, and considering whether under all the circumstances less burdensome procedures would suffice as well to protect the interests claimed by the State.

The Dart Court made several constitutional miscalculations in analyzing the rights of the plaintiffs herein. The Court insisted that since Henry Dart as an individual had attained a position on the ballot, the Libertarian Party had thereby achieved adequate protection of its rights of political association. Dart v. Brown, supra, Slip Opinion, Page 357; Appendix, Pages 28-30. Similarly the Court insisted that the rights of the electorate, including the supporters and sympathizers of plaintiffs, to be able to vote effectively were not impaired by Louisiana's party recognition law. Id., Slip Opinion, Pages 357 and 363; Appendix, Pages 29-30 and 50. The Court even maintained that the absence of party affiliation on the ballots of Libertarian candidates in Louisiana does not suggest to the voters that the candidates are unaffiliated. Id., Slip Opinion, Page 358; Appendix, Pages 34-35. The Court summarized its observations on these matters by stating that

the challenged Louisiana statutes do not require candidates of minor parties to "fly under false colors." Id., Slip Opinion, Page 359; Appendix, Page 35.

All of these conclusions of the Court are belied by common sense. A political party grows by the identification of its candidates and programs in the public eye. The educational and communicative aspects of partisan activity are largely ignored by equating independent candidate access to ballots with meaningful party access.

It is also self-evident that as political parties become more familiar to the public, sympathetic voters will be drawn to their candidates because of their party labels. In Louisiana a major-party voter who is not highly familiar with a particular candidate may have the benefit of knowing the candidate's political party in helping him make his vote decision.

Furthermore, to require a partisan candidate to stand for election without a party label along with candidates of major parties whose parties are identified cannot fail to lead many voters to the conclusion that the candidate is indeed independent. In other words, Louisiana does require "false colors" of minor party candidates.

The Dart Court was unrealistic as well in evaluating the size of the barrier to new party recognition created by La. R.S. 18:441. The Fifth Circuit implies that requiring a voter to change his registration is not significantly more difficult than requiring him to sign a petition. Dart v. Brown, supra, Slip Opinion, Page 366; Appendix, Page 63. Cf. North Carolina Socialist Workers Party v. North Carolina State Board of Elections, supra, and Libertarian Party of South Dakota v. Kundert, supra.

It is well settled that States may require "some preliminary showing of a significant modicum of support" before granting ballot access to new political parties. Jenness v. Fortson, 403 U.S. 431, 91 S.Ct. 1970, 29 L.Ed.2d 554 (1971).

> Of course, what is demanded may not be so excessive or impractical as to be in reality a mere device to always, or almost always, exclude parties with significant support from the ballot. The Constitution requires that access to the electorate be real, not 'merely theoretical.' Jenness v. Fortson, 403 U.S. 431, 439, 91 S.Ct. 1970, 1974 (1971).

American Party of Texas v. White, 415 U.S. 767, 763, 94 S.Ct. 1296, 1307 (1974).

When La. R.S. 18:441 and La. R.S. 18:551 (D) and (E) are considered against the Jenness standard, they are seen to be very severe requirements for party recognition. The presidential vote alternative is only available every four years, and it will have no relevance at all to a party not fielding a presidential candidate.

The five percent voter registration route to party recognition is an extremely difficult condition to satisfy. The much greater difficulty of securing a change in voter registration compared to a signature on a petition is one problem. A second striking difficulty is that small parties running candidates in local or district elections are still required to amass some 97,000 registered voters in order to have partisan ballot access.

The Court may take judicial notice that on September 11, 1982 in the Sixth Congressional District of Louisiana, James D. Agnew, the candidate of the Libertarian Party, polled 19,354 votes of 84,623 votes cast, or approximately twenty-three (23%) percent.

Petitioners submit that it is most unlikely that any rational measure of "a modicum of support" would fail to qualify the Libertarian Party of Louisiana for recognition on Louisiana ballots. Moreover the discrimination that Louisiana law makes between the

presidential election and all others with regard to party ballot access suggests, without more, that the Louisiana scheme lacks even a rational basis. (See La. R.S. 18:1259(B), Appendix, Pages 154-156.)

At Pages 158-163 of the Appendix is a table prepared by Richard Winger of the Libertarian Party showing the major requirements that a new party must meet in every state in order to be qualified to run its candidates for statewide office with party affiliation indicated on the ballot. It will be seen that only three states condition such ballot access on obtaining a certain number of voter registrations as opposed to petition signatures. Of these, Louisiana's requirement is by far the most difficult to accomplish. In fact, the Louisiana requirement appears to be the most restrictive party ballot access law in the nation.

Petitioner submits that a realistic analysis of the Louisiana party recognition

statutes is that their only purpose is to reduce partisan competition by keeping any party labels but Democratic and Republican off the ballots. Far from encouraging voter confusion, designation of party affiliation for bona fide minor party candidates can only increase the useful information available to the voter.

Petitioner submits that there is neither a compelling state interest nor even a rational basis for suppressing party names in this fashion. The availability of nominating petitions as a less burdensome yet effective alternative points to the same conclusion. La. R.S. 18:441 and La. R.S. 18:551 (D) and (E) unfairly and unnecessarily burden the availability of partisan political opportunity in Louisiana.

CONCLUSION

Petitioner, the Libertarian Party of Louisiana, prays that the Supreme Court issue a Writ of Certiorari directed to the United States Court of Appeals for the Fifth Circuit to review the judgment of the Court of Appeals herein.

RESPECTFULLY SUBMITTED:

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